

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6045

BILL NUMBER: SB 179

NOTE PREPARED: Dec 5, 2012

BILL AMENDED:

SUBJECT: Physical Plant Requirements for Abortion Clinics.

FIRST AUTHOR: Sen. Banks

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: For purposes of the hospital licensure law, this bill modifies the definition of "abortion clinic" to include an entity that provides abortion-inducing drugs for the purpose of inducing an abortion. The bill provides a definition of "abortion-inducing drug".

The bill sets forth certain safety and health requirements that an abortion clinic must meet. It specifies that existing licensed abortion clinics must meet the safety and health requirements.

The bill also requires the Indiana State Department of Health (ISDH) to inspect an abortion clinic at least one time per year.

Effective Date: July 1, 2013.

Summary of NET State Impact: The fiscal impact of this bill would depend upon the number of existing licensed and newly licensed medical abortion clinics that would meet the physical plant requirements specified in the bill. The Department has estimated an additional one-time expense in a maximum range of \$84,000 to \$224,000 for the administrative due process associated with the license revocation of the nine currently operating abortion clinics and up to five medical clinics that may require licensure based on the change in definition of an abortion clinic. The range in the cost estimate reflects the difference in the cost of administrative due process between the use of in-house administrative law judges (ALJs) and outside counsel. Costs could be less if some clinics are compliant with the rules or if fewer medical clinics are added to the licensed category.

Because the number of survey staff is currently operating above capacity, the increase in the frequency and number of inspections required by the provisions of the bill could result in a loss of federal reimbursement associated with other certification activities since abortion clinic inspections are paid with 100% state funds. Licensure revenue would be impacted to the extent that the number of clinics meeting the physical plant requirements would increase or decrease.

Explanation of State Expenditures: *Physical Plant Requirements:* The bill specifies physical plant requirements that a licensed abortion clinic must meet. It also eliminates a provision in the current ISDH rules that exempts clinics operating before July 1, 2006, from specific physical plant requirements. Those clinics which do not meet physical plant specifications by January 1, 2014, may require additional inspections by the ISDH to ascertain noncompliance prior to license revocation. Additionally, the bill would potentially increase the number of licensed abortion clinics due to the addition of medical abortions to the definition of abortion clinic. ISDH has estimated this provision may add up to five clinics that would need to be licensed.

Additionally, each party that has a license revoked due to noncompliance would be entitled to the due process procedure required by the Administrative Orders and Procedures Act. Each party is entitled to an administrative hearing and an appeal panel if the decision is appealed. A decision by the appeals panel may then be reviewed by the judicial system. The Department has estimated an additional one-time expense of between \$84,000 to \$224,000 for the administrative due process associated with the license revocation of the 9 currently licensed abortion clinics and perhaps 5 additional clinics that would require licensure based on the change in definition of abortion clinic. This estimate assumes that 14 abortion clinics would request an administrative hearing and subsequently appeal a decision. Costs could be less if some clinics are compliant with the rules or if fewer medical clinics are added to the licensed category. The range in the cost estimate reflects the difference in the cost of administrative due process between the use of in-house administrative law judges (ALJs) and outside counsel. The cost of the initial administrative hearing and subsequent appeals using in-house ALJs is estimated to be about \$6,000 per licensure action. Outside counsel cost is estimated at \$200 per hour with 80 hours required for each licensure action, or \$16,000. The extent to which the in-house ALJs would have time available for additional administrative hearings and appeals is unknown at this time.

Annual Inspection Requirement: The fiscal impact of the annual survey provision would depend upon the number of clinics that meet the physical plant requirements specified in the bill. If nine clinics continue to maintain their licensure, the ISDH would have an increase in survey workloads as explained below. If some of the clinics cannot meet the physical plant requirements, the ISDH may have additional inspections to ascertain noncompliance prior to license revocation and then a subsequent decrease in survey workloads. The ISDH reports that adding a requirement for annual surveys of the nine licensed abortion clinics would require a minimum of 25 days of surveyor time plus administrative time associated with scheduling and record keeping. The addition of medical abortions to the definition of abortion clinic may increase the number of surveys required. ISDH has estimated there may be up to five clinics that would meet the parameters of the expanded definition. Impact on the number of surveyor days required would depend on the number of applications for licensure the ISDH would receive as a result of the changed definition; if five clinics apply, about 14 days of surveyor time would be required.

ISDH reports that due to the increase in the number of acute care facilities, the number of survey staff is currently operating above capacity and that an increase in survey hours would result in other surveys being delayed or would require additional staff. Licensure of abortion clinics is a state-operated program conducted with 100% state general funds, while hospital, ambulatory outpatient surgical center, and other acute care survey inspections are conducted in concert with federal Medicare and Medicaid certification surveys

qualifying those survey expenses for 50% federal administrative matching funds. Shifting resources to add 25 days of surveyor time to 100% state-funded program surveys would effectively remove resources for 50 days of surveyor time from acute care surveys that currently qualify for federal matching funds.

Additional Inspection Information: Current ISDH rules filed in 2006 for licensure of abortion clinics require a licensing inspection once every two years. Mirroring other health facility licensure rules, the ISDH may accept an accreditation or certification survey under certain conditions, requiring the ISDH to conduct a survey at a minimum of once every four years. Currently, all of the surveys of the abortion clinics in the state are conducted by ISDH acute care survey staff.

Explanation of State Revenues: *Annual Inspection Requirement:* Because the ISDH reports that survey staff time is at capacity, assigning staff to surveys conducted with 100% state general funds would result in a decrease in federal funding associated with the matching funds available for Medicaid/Medicare acute care certification activities if all existing licensed clinics maintain their licensure status and/or more clinics seek licensure as a result of the change in definition.

Physical Plant Requirements: The bill may reduce the amount of fees collected after July 1, 2013, for abortion clinic licensure to the extent that any of the currently operating clinics cannot meet the physical plant requirements specified in the statute and regulations. The revision in the definition of abortion clinic to include medical abortions is estimated to add up to five facilities requiring licensure. Currently, the minimum abortion clinic license fee is \$500 annually. Any additional revenue would depend on the extent to which any newly defined facilities would meet the physical plant requirements necessary for licensure.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: ISDH.

Local Agencies Affected:

Information Sources: ISDH.

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